

JOSEPH P. RUSSONIELLO (CABN 44332)

United States Attorney

JOANN M. SWANSON (CABN 88143)

Chief, Civil Division

JULIE A. ARBUCKLE (CABN 193425)

Assistant United States Attorney

450 Golden Gate Avenue, Box 36055

San Francisco, California 94102-3495

Telephone: (415) 436-7102

Fax: (415) 436-6748

E-mail: julie.arbuckle@usdoj.gov

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

OFFICE OF THE GENERAL COUNSEL

JONATHAN C. BRUMER

330 Independence Ave., S.W., Room 5344

Washington, D.C. 20201

Telephone: (202) 205-8703

Attorneys for Federal Defendant

LAW OFFICES OF GARY E. GLEICHER

GARY E. GLEICHER

433 N. Camden Dr., Ste. 730

Beverly Hills, CA. 90210

Telephone: (310) 277-3696

Fax: (310) 273-7679

HONIGMAN MILLER SCHWARTZ AND COHN LLP

KENNETH R. MARCUS

660 Woodward Avenue

2290 First National Building

Detroit, MI 48226-3506

Telephone: (313) 465-7470

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

ST. FRANCIS MEMORIAL HOSPITAL)
AND FRANKLIN BENEVOLENT)
CORPORATION f/k/a DAVIES MEDICAL)
CENTER,)

Plaintiffs,)

v.)

MICHAEL O. LEAVITT, Secretary,)
U.S. Department of Health and Human)
Services,)

Defendant.)

No. CV 08-1440 MMC

STIPULATION AND ~~PROPOSED~~
ORDER TO STAY ACTION

AND ORDER DIRECTING PARTIES TO
FILE JOINT STATUS REPORT

1 Defendant, Michael O. Leavitt, the Secretary of Health and Human Services (“the
2 Secretary”) and Plaintiffs, St. Francis Memorial Hospital and Franklin Benevolent Corporation
3 f/k/a Davies Medical Center (the “Hospitals”), by and through their undersigned counsel,
4 respectfully stipulate that this Court enter an order staying the proceedings in the above-
5 captioned action pending the final administrative and judicial disposition of the case of Provider
6 Reimbursement Review Board (“PRRB”) Group Appeal No. 98-1376G (the “Group Appeal”).
7 In support of this stipulation, the parties state as follows:

8 1. The parties previously informed the Court that they were discussing the possibility of
9 staying this case as well as another case, Glendale Memorial Hosp. and Health Ctr. v. Leavitt,
10 CV08-1747 (MMM) (AGRx) (C.D. Cal.), pending the final administrative and judicial
11 disposition of the Group Appeal. By a “final judicial disposition,” the parties mean to refer to a
12 final non-appealable Court decision.

13 2. Counsel for the Hospitals have been informed that the Group Appeal is set for a record
14 hearing. Although it is impossible to predict with any certainty when the decision of the PRRB
15 will be issued, the parties are hopeful that the decision may be issued in the reasonably near
16 future.

17 3. In this action, Plaintiffs challenge three jurisdictional decisions by the PRRB. See
18 Complaint ¶¶ 50, 58, 66, and Exhs. 1-3 thereto. The sole legal issue before the Court is whether
19 the PRRB’s decisions declining jurisdiction over Plaintiffs’ claims for certain fiscal years at
20 issue in the Group Appeal were arbitrary, capricious, contrary to the law, or an abuse of
21 discretion.

22 4. In anticipation of the PRRB’s eventually issuing a decision in the Group Appeal, to allow
23 for the possibility that the final administrative and judicial disposition of the Group Appeal may
24 obviate the need for further proceedings in this action, and in the interest of conserving the
25 resources of the Court and the parties, the Hospitals and the Secretary believe that proceedings in
26 the instant case should be stayed, pending the final administrative and judicial disposition of the
27 Group Appeal.

28 5. In the event the Providers do not prevail upon the final administrative and judicial

1 disposition of the Group Appeal, the Hospitals will dismiss the instant case with prejudice within
2 thirty days following the date of such final disposition.

3 6. In the event the Providers prevail upon the final administrative and judicial disposition of
4 the Group Appeal, the parties will jointly move the Court to reinstate the instant case for
5 proceedings and a determination regarding the PRRB's decision denying the Hospitals the right
6 to participate in the Group Appeal within thirty days following such final disposition.

7 7. In the event the Hospitals first prevail upon the final administrative and judicial
8 disposition of the Group Appeal, and then prevail in the final disposition in the instant case
9 (including any postjudgment proceedings and appeals), the Secretary will pay to the Hospitals
10 the underlying Medicare payment to which they would have been entitled had they participated
11 in the Group Appeal, without the necessity for a remand to the Secretary for further proceedings
12 and a decision on the merits, within ninety days following the date of such final disposition.

13 8. In the event the PRRB does not issue a decision in the Group Appeal within six months
14 following the date of the Court's order staying the instant case the Hospitals will have the right
15 at any time thereafter to move the Court to reinstate the instant case, which motion the Secretary
16 will not oppose. In the event that the Secretary settles the Group Appeal while this action is
17 stayed, the Hospitals will have the right to move the Court to reinstate the instant case, which
18 motion the Secretary will not oppose.

19 9. This request is made in good faith and not for purposes of delay.
20

21 ACCORDINGLY, THE PARTIES hereby stipulate and agree that:

22 1. Proceedings in the instant case be stayed, pending the final administrative and judicial
23 disposition of the Group Appeal; and

24 2. In the event the Providers do not prevail upon the final administrative and judicial
25 disposition of the Group Appeal, the Hospitals will dismiss the instant case with prejudice within
26 thirty days following the date of such final disposition; and

27 3. In the event the Providers prevail upon the final administrative and judicial disposition of
28 the Group Appeal, the parties will jointly move the Court to reinstate the instant case for

1 proceedings and a final determination regarding the PRRB's decision denying the Hospitals the
2 right to participate in the Group Appeal within thirty days following such final disposition; and

3 4. In the event the Hospitals first prevail upon the final administrative and judicial
4 disposition of the Group Appeal, and then prevail in the final disposition in the instant case
5 (including any postjudgment proceedings and appeals), the Secretary will then pay to the
6 Hospitals the underlying Medicare payment to which they would be entitled had they
7 participated in the Group Appeal, without necessity for a remand to the Secretary for further
8 proceedings and a decision on the merits, within ninety days following the date of such final
9 disposition; and

10 5. In the event the PRRB does not issue a decision in the Group Appeal within six months
11 following the date of the Court's order staying the instant case, the Hospitals will have the right
12 at any time thereafter to move the Court to reinstate the instant case, which motion the Secretary
13 will not oppose. In the event that the Secretary settles the Group Appeal while this action is
14 stayed, the Hospitals will have the right to move the Court to reinstate the instant case, which
15 motion the Secretary will not oppose.

16 6. In the event the Court denies this Stipulation to Stay Action, the parties agree that
17 each of the deadlines in the current briefing schedule will be extended by 14 days from the date
18 of the Court's order, and that upon receipt of any such order, they will promptly submit a
19 Stipulation and [Proposed] Order to the Court reflecting this agreement

20 The filer of this document, counsel for Federal Defendant, attests that concurrence in the

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3 filing of this document has been obtained from each of the other signatories.
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5 Respectfully submitted,

6 LAW OFFICES OF GARY E. GLEICHER

JOSEPH P. RUSSONIELLO
United States Attorney

7 /S/
Gary E. Gleicher
433 N. Camden Dr., Ste. 730
8 Beverly Hills, CA. 90210
Tel.: (310) 277-3696
9 Fax: (310) 273-7679

/S/
Julie A. Arbuckle
Assistant United States Attorney
450 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
Tel.: (415) 436-7102
Fax: (415) 436-6748

10
11 /S/
12 Kenneth R. Marcus
Honigman Miller Schwartz and Cohn LLP
13 660 Woodward Avenue
2290 First National Building
14 Detroit, MI 48226-3506
Tel.: (313) 465-7470

/S/
Jonathan C. Brumer
U.S. Department of Health and Human
Services
Office of the General Counsel
Centers for Medicare and Medicaid Services
Division
330 Independence Ave., S.W., Room 5344
Washington, D.C. 20201
Tel.: (202) 205-8703

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17 Attorneys for Plaintiffs


Attorneys for Federal Defendant

18 Dated: December 10, 2008

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20 PURSUANT TO STIPULATION, IT IS SO ORDERED. Further, the parties are directed to file
21 a joint status report no later than July 10, 2009.

22
23 Dated: December 11, 2008


MAXINE M. CHESNEY
United States District Judge